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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,643	04/09/2004	Robert J. Medoff	U 015145-3	9009

140 7590 08/19/2010  
LADAS & PARRY LLP  
26 WEST 61ST STREET  
NEW YORK, NY 10023

EXAMINER
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BATES, DAVID W

ART UNIT	PAPER NUMBER
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3775

NOTIFICATION DATE	DELIVERY MODE
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08/19/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nyuspatactions@ladas.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,643	<b>Applicant(s)</b> MEDOFF, ROBERT J.	
	<b>Examiner</b> DAVID W. BATES	<b>Art Unit</b> 3775	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 and 54-67 is/are pending in the application.
- 4a) Of the above claim(s) 1-37 and 54-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-45 and 58-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 4, 2009 has been entered.

### ***Claim Objections***

2. Claims 38 and 44 are objected to because of the following informalities: In line 9, the "prioximity" appears that it should be spelled -proximity--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 38-45 and 58-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medoff (US 5,709,682) in view of Petersen (US 3,826,024).

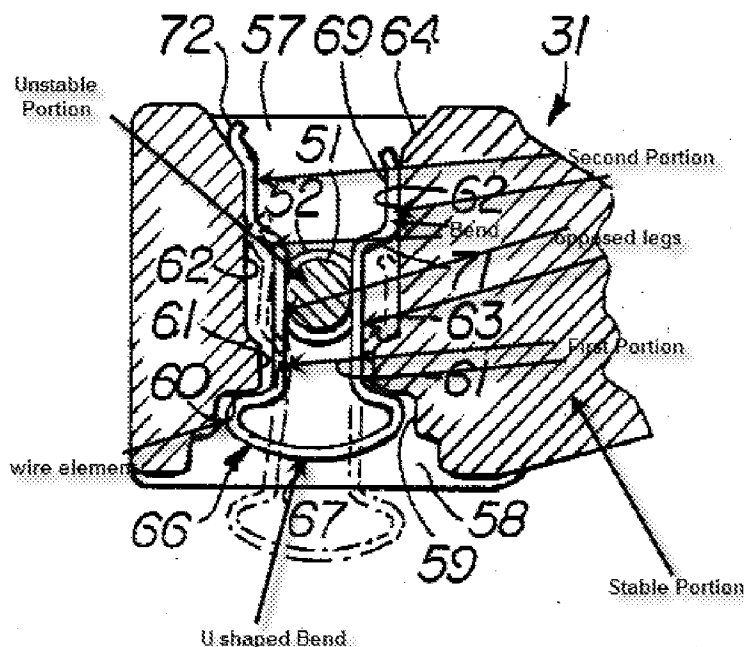
5. Regarding claims 38-45 and 58-67, Medoff discloses an implant comprising a single wire having a U-shaped bend (for example top view Fig. 2) defining a first region, with opposite legs extending from the U-shaped bend and are parallel, wherein said legs have distal ends (49) that are bent away (also, 5) and are capable of buttressing a surface of a bone (see Fig. 3). This portion of the legs comprise a second portion, aside

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from a first portion (approx, 41, which lies in the same plane as the U-shaped bend), wherein the second portion lies outside the first plane of the first portion. The legs are considered parallel to one another and the legs are of equal length in the view of Fig. 2. Medoff also discloses a pin in combination with a washer (6, Fig. 6) which can assist in holding the pin legs in relation to another, or alternatively, assist in holding or securing the pin to a bone (within alternative pin 4). The implant of Medoff further discloses a bent portion (approx 41) that connects the two portions out of plane.

Medoff discloses the claimed invention except for a region extending from the U-shaped bend which is a second region in proximity to the distal end, in which the spacing of the legs is different, or wherein the length of the legs in the distal region is unequal.

Petersen teaches a pin of the configuration demonstrated below in the marked up figure:



It would have been obvious to one with ordinary skill in the art at the time of the invention to incorporate the various distances between the legs of the retaining device of Petersen with the device of Medoff to have predictably achieved the result of facilitating the implantation of the Medoff device (col. 5, lines 6-7).

### ***Response to Arguments***

6. Applicant's arguments, see the remarks, filed December 4, 2009, with respect to the rejections of claims 38-45 and 58-62 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground of rejection is made in view of Medoff and Petersen.

### ***Response to Amendment***

7. The declaration under 37 CFR 1.132 filed August 11, 2010 is sufficient to overcome the rejection of claims 38-45 and 58-62.

8. Applicant argues, in at least one case, that the "function" of a hair pin makes it non-obvious to combine the design of the hairpin with the device of the implant. If the hairpin had a design that made it able to perform the function of the implant, combining a feature of the design of the hairpin would have been acceptable.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID W. BATES whose telephone number is (571)270-7034. The examiner can normally be reached on Monday-Friday 9:00AM - 6:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W. B./  
Examiner, Art Unit 3775

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art  
Unit 3775